



AGO_1993_No_003

INITIATIVE 276--CAMPAIGN CONTRIBUTIONS--ELECTIONS--PUBLIC DISCLOSURE COMMISSION--FINES--FUNDS--Requirement for out-of-state organizations to report campaign contributions under Initiative 276.

1. RCW 42.17.080-.090 require political committees to report campaign contributions to the Public Disclosure Commission. This requirement only applies to political committees. An organization is only a political committee if a primary purpose of the organization is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions.
2. Washington must have jurisdiction over an out-of-state political committee in order to impose its campaign reporting requirements. To obtain jurisdiction there must be purposeful minimum contacts between the out-of-state organization and Washington. This is a factual question that must be determined on a case by case basis, however, the act of making contributions in Washington establishes the necessary jurisdiction.
3. If Washington does not have jurisdiction over an out-of-state political committee, it is not required to file reports with the state. However, if this nonreporting committee subsequently makes contributions to candidates in Washington, it must file a report pursuant to RCW 42.17.090(1)(k) as a nonreporting political committee or its contribution will be forfeited to the state.

* * * * *

March 19, 1993

Honorable Cal Anderson
State Representative, District 43
401 John L. O'Brien Building, MS 0685
Olympia, WA 98504-0685

Cite as: AGO 1993 No. 3

Dear Representative Anderson:

By letter previously acknowledged you requested our opinion on a question we paraphrase as:

Under what circumstances will an out-of-state organization, that makes campaign contributions in Washington elections, be required to file campaign financing reports pursuant to RCW 42.17.080-.090?

BRIEF ANSWER

RCW 42.17.080-.090 impose reporting requirements on political committees. If an out-of-state organization is not a political committee, it is not required to report campaign contributions. Before Washington acquires the jurisdiction to require an out-of-state political committee to report, there must be purposeful minimum contacts between the committee and Washington. The act of making contributions in Washington establishes the necessary jurisdiction. Funds received

from an out-of-state nonreporting political committee shall be forfeited to the state, unless the committee reports pursuant to RCW 42.17.090(1)(k).

BACKGROUND

In 1972 the people enacted Initiative 276. Laws of 1973, ch. 1; RCW 42.17. The initiative declared the policy that political campaign "contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided". RCW 42.17.010(1). To this end, the law imposed campaign reporting requirements on candidates and political committees. The law defines political committee as:

[A]ny person (except a candidate or an individual dealing with his own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

RCW 42.17.020(25) (emphasis added). The term "person" is broadly defined to include:

[A]n individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

RCW 42.17.020(22).

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The law requires a political committee to file several kinds of reports with the Public Disclosure Commission. The political committee must file these reports "within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier". RCW 42.17.040(1) (emphasis added).

At that time, the political committee must file three reports. See AGO 1973 No. 14, at 16-18. First, the political committee must file a statement of organization which provides information about the committee. RCW 42.17.040. Second, the political committee must designate a campaign treasurer and the bank or other institution where its funds will be deposited. RCW 42.17.050. Third, the political committee must file an initial report of contributions received and

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expenditures made. RCW 42.17.080-.090. In addition to these initial reports, a political committee is required to file on the 21st day and the 7th day immediately preceding the date on which the election is held and on the 10th day of the first month after the election. RCW 42.17.080(2)(a), (b).

If a political committee has not filed reports pursuant to RCW 42.17.040-.050, .080-.090 and makes campaign contributions, the funds will be forfeited to the state unless a report under RCW 42.17.090(1)(k) is filed. RCW 42.17.090(1)(k) provides:

Funds received from a political committee not otherwise required to report under this chapter (a "nonreporting committee"). Such funds shall be forfeited to the state of Washington unless the nonreporting committee has filed or within ten days following such receipt files with the commission a statement[.]

(Emphasis added.)

The Public Disclosure Commission has the authority to enforce these reporting requirements with certain civil remedies and sanctions. These include a civil penalty of not more than ten thousand dollars for each violation or, in the case of failure to report a campaign contribution, a civil penalty equivalent to the amount that was not reported. RCW

42.17.390(c), (e).

You have asked whether an out-of-state organization is required to report campaign contributions in Washington pursuant to RCW 42.17.080-.090.

ANALYSIS

We begin our analysis with a point common to both in-state and out-of-state organizations. The reporting requirements in RCW 42.17.080-.090 apply to "political committees". If an organization is not a "political committee", it is not required to file reports under the law. A political committee is defined as a person "having the expectation of receiving contributions or making expenditures in support of, or opposition to, a candidate or any ballot proposition." RCW 42.17.020(25).

In State v. Evans Campaign Committee, 86 Wn.2d 503, 546 P.2d 75 (1976), the court adopted a primary purpose test to determine if an organization is a political committee. The court said:

Where the surrounding facts and circumstances indicate that the primary or one of the primary purposes of the person making the contribution is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions, then that person becomes a "political committee" and is subject to the act's disclosure requirements.

Evans Campaign Committee, 86 Wn.2d at 509 (emphasis added).

An organization is only a political committee if a primary purpose of the organization is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions. If this is not a primary purpose of the organization, it is not a political committee. For example, an organization that receives dues and provides educational materials to its members to assist them in making a decision about candidates and ballot propositions is not a political committee. See AGO 1973 No. 14, at 16. In addition, if an organization is not a political committee, the fact that it makes a contribution to a political committee or candidate does not make it a political committee. AGO 1973 No. 14, at 24-27.

The primary purpose test requires an inquiry about the facts and circumstances of each organization and must be determined on a case by case basis. However, if an out-of-state (or in-state) organization is not a political committee,
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RCW 42.17.080-.090 do not impose a reporting requirement on the organization.

If an organization is a political committee, RCW 42.17.080-.090 impose a reporting requirement. However, with regard to out-of-state political committees, the due process clause of the Fifth Amendment to the United States Constitution places limits on a state's jurisdiction over persons and organizations that lie beyond its borders. In Grange Insurance v. State, 110 Wn.2d 752, 757 P.2d 933 (1988), the Washington Supreme Court summarized the jurisdictional test:

The United States Supreme Court has established that due process requires that the following three elements be met before jurisdiction can be constitutionally extended: (1) that purposeful "minimum contacts" exist between the defendant and the forum state; (2) that the plaintiff's injuries "arise out of or relate to" those minimum contacts; and (3) that the exercise of jurisdiction be reasonable, that is, that jurisdiction be consistent with notions of "fair play and substantial justice." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-78, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985). . . .

The same general standards have been adopted in Washington case law, although they are phrased in a slightly different manner. This court has set out the following test:

[T]here are three basic factors which must coincide if jurisdiction is to be entertained. Such would appear to be: (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

(Footnotes omitted.) *Tyee Constr. Co. v. Dulien Steel Prods., Inc.*, 62 Wn.2d 106, 115-16, 381 P.2d 245 (1963). Because these two tests are so similarly phrased, this opinion refers to them jointly as the due process test.

Grange, 110 Wn.2d at 758 (emphasis added).

Thus, before Washington can require an out-of-state political committee to file reports with the Public Disclosure Commission, there must be purposeful minimum contacts between Washington and the committee and the contacts must be related to the state's exercise of jurisdiction. In addition, the exercise of jurisdiction must be reasonable.

To put this test in context with the reporting requirements in RCW 42.17.080-.090, consider the following hypothetical situation. Assume that an organization is formed outside of Washington. The organization is a "political committee" because its primary purpose is to support or oppose a ballot proposition in Washington. The committee begins soliciting contributions in other states and planning expenditures in Washington. However, during the first two months of its existence, the committee makes no contact with Washington. It makes no expenditures in this state nor solicits or receives any contributions from Washington residents.

As we explained in our background discussion, a new political committee must do three things. See AGO 1973 No. 14, at 16-18. First, within two weeks after its organization, or within two weeks after the date when it first has the expectation of receiving contributions or making expenditures, whichever is earlier, the committee must file a statement of organization. RCW 42.17.040. Second, it must designate its treasurer and a depository. RCW 42.17.050. Third, it must file its initial report of contributions received and expenditures made. RCW 42.17.080-.090.

These requirements cannot apply to our hypothetical out-of-state political committee because Washington has not yet acquired jurisdiction over the committee. This is because at the time these reports would have been required under the statutes, the hypothetical committee did not "purposefully do some act or consummate some transaction in [Washington]". Grange, 110 Wn.2d at 758. It did not solicit contributions from Washington residents nor make contributions or expenditures in this state.

Thus, with regard to your question, the hypothetical out-of-state political committee is not required to file a report pursuant to RCW 42.17.080-.090 within two weeks after its organization or within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign.

Subsequently, our hypothetical committee does make campaign contributions in Washington. RCW 42.17.090(1)(k) provides that:

Funds received from a political committee not otherwise required to report under this chapter (a "nonreporting committee"). Such funds shall be forfeited to the state of Washington unless the nonreporting committee has filed or within ten days following such receipt files with the commission a

statement[.]

(Emphasis added.)

~~The term "nonreporting political committee" is not defined by the statute. However, the meaning of this term is self-evident. A nonreporting political committee is a committee that has not filed reports pursuant to RCW 42.17.040, .050 and .080. This would include political committees for election campaigns that the statute exempts from the reporting requirements. For example, RCW 42.17.030 provides that the reporting requirements in RCW 42.17.040, .050 and .080 do not apply to campaigns for a federal elective office. A political committee organized to support a candidate for federal elective office would be a nonreporting political committee. If it made a contribution to a candidate for a state office such as governor, it would be required to file a report pursuant to RCW 42.17.090(1)(k) or the contribution would be forfeited to the state.~~

Our hypothetical out-of-state political committee is also a nonreporting political committee. It is a nonreporting political committee because it did not file reports pursuant to RCW 42.17.040, .050 and .080. It is irrelevant that the hypothetical committee's nonreporting status is based on the United States Constitution rather than an exemption in the law itself.

Therefore, if our hypothetical out-of-state political committee began making contributions to candidates or political committees in Washington, it would be required to report as a nonreporting committee pursuant to RCW [4] 42.17.090(1)(k) or the contributions would be forfeited to the state.

It is important to note that requiring the hypothetical political committee to report pursuant to RCW 42.17.090(1)(k) does not violate due process guarantees of the United States Constitution. Once the committee begins making contributions in Washington, this state acquires jurisdiction under the tests articulated by the Washington Supreme Court in Grange. First, the contribution constitutes a purposeful act in Washington. Second, the reporting requirement arises as a direct result of the contribution. Third, the reporting requirement does not offend traditional notions of fair play and substantial justice.

The state has a substantial interest in disclosure of campaign contributions. Disclosure assists the voters in making an informed decision by revealing a candidate's or ballot measure's sources of support or opposition. Disclosure also deters corruption and the appearance of corruption. See Buckley v. Valeo, 424 U.S. 1, 46 L. Ed. 2d 659, 714-16, 96 S. Ct. 612 (1976). In addition, the information required by RCW 42.17.090(1)(k) is limited and related to Washington. A nonreporting committee is required to report its name and address; its purpose; the name, address, and title of its officer; and the candidates and ballot propositions it supports and opposes in Washington. RCW 42.17.090(1)(k)(i), (ii), (iii), (iv), (v). The nonreporting committee is also required to report the names and addresses of Washington residents or corporations who have made contributions to the committee or to whom an expenditure was made on behalf of a candidate or political committee. RCW 42.17.090(1)(k)(vi), (vii).

To this point, we have discussed your questions in terms of a clear example. Our hypothetical out-of-state political committee had no contact with Washington until well after it had begun operation. Thus it was not difficult to conclude that it was not required to file the reports usually required when a political committee is organized. In practice, the lines are not as clear. Jurisdiction over out-of-state political committees depends on the facts and will vary depending on the organization and operation of each individual political committee. The simple fact that the committee was organized outside of Washington does not automatically mean that it is not subject to the reporting requirements of RCW 42.17.040-.050, .080-.090. If a political committee has contacts with Washington such as making expenditures and soliciting members and contributions in this state, Washington will likely acquire jurisdiction over the committee. See, e.g., Quill Corp. v. North Dakota, 504 U.S. ___, 119 L. Ed. 2d 91, 103, 112 S. Ct. 1904 (1992) (state has jurisdiction under the due process clause to require an out-of-state business, that solicits sales through the mail, to collect state sales tax). For example, if our hypothetical political committee began organizing by making expenditures and soliciting

members and contributions in Washington, it would likely be subject to Washington's jurisdiction and, within two weeks of its organization, would be required to file pursuant to RCW 42.17.040-.050 and .080-.090. Again, the question of jurisdiction depends on the facts and must be determined on a case by case basis.

If an out-of-state (or in-state) political committee is required to file reports pursuant to RCW 42.17.040-.050, .080-.090, it cannot escape these requirements by filing a report pursuant to RCW 42.17.090(1)(k). The statement authorized by RCW 42.17.090(1)(k) is for "a political committee not otherwise required to report". A committee that is required to report does not transform itself into a nonreporting committee simply by filing the statement authorized by RCW 42.17.090(1)(k).

As we noted in our background discussion, the Public Disclosure Commission has authority to impose penalties for failure to comply with the act. If a political committee has violated the law by failing to file under RCW 42.17.040-.050 and .080-.090, the Commission is free to impose penalties under RCW 42.17.390, even if the political committee reports pursuant to RCW 42.17.090(1)(k).

In summary, an out-of-state political committee must report under either RCW 42.17.080 or .090(1)(k). If Washington establishes jurisdiction over an out-of-state political committee as it is being formed, the committee would be required to report pursuant to RCW 42.17.040, .050 and .080. If an out-of-state political committee reports under these provisions, it is a reporting political committee and is not required to report under RCW 42.17.090(1)(k). On the other hand, if the out-of-state political committee does not report pursuant to RCW 42.17.040, .050 and .080, it is a nonreporting political committee and is required to report under RCW 42.17.090(1)(k) or its contributions will be forfeited to the state.

We trust that this opinion will be of assistance to you.

Very truly yours,

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The law provides limited exceptions to the campaign reporting requirements. RCW 42.17.030 provides:

The provisions of this chapter relating to the financing of election campaigns shall apply in all election campaigns other than (1) for precinct committee officer; (2) for a federal elective office; and (3) for an office of a political subdivision of the state that does not encompass a whole county and that contains fewer than five thousand registered voters as of the date of the most recent general election in

the subdivision unless required by RCW 42.17.405(2) through (5).

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The requirements are slightly different for a "continuing political committee" which is an organization of continuing existence not established in anticipation of any particular election campaign. RCW 42.17.020(9). A continuing political committee must file reports pursuant to RCW 42.17.065 until it is dissolved.

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While organizations that are not political committees do not have to report, it is important to remember that any contributions by such organizations must be reported by the candidate or political committee receiving the contribution. RCW 42.17.090(b).

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The current language of RCW 42.17.090(1)(k) was adopted in 1989 when the statute was amended. The amendment provided in part:

(k) Funds received from a political committee (~~((not domiciled in Washington state or))~~) not otherwise required to report under this chapter (a "nonreporting committee"). Such funds shall be forfeited to the state of Washington unless the nonreporting committee (~~((or the recipient of such funds))~~) has filed or within ten days following such receipt (~~((shall))~~) files with the commission a statement[.]

Laws of 1989, ch. 280, § 9, p. 1409. Under the prior law, forfeiture could be avoided if either the nonreporting committee or the recipient of the funds filed a statement disclosing information about the nonreporting committee. Presumably, it would have been difficult for the recipient to provide the required information about the contributing nonreporting committee and the 1989 amendment eliminates this option.

Prior to the 1989 amendment, it might have been argued that an out-of-state political committee was only required to file a statement pursuant to RCW 42.17.090(1)(k) and was not required to file other reports, even if Washington had jurisdiction. In our view, the deletion of the phrase "not domiciled in Washington state" clarifies the Legislature's intent to require out-of-state political committees to file pursuant to RCW 42.17.040-.050, and .080-.090 if Washington has jurisdiction. After the 1989 amendment, an out-of-state political committee must file under RCW 42.17.090(1)(k) only if it is a nonreporting political committee.